IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

Crl.MC.No. 10757 of 2002()

CC.302/2001 of CHIEF JUDICIAL MAGISTRATE COURT, KOLLAM

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PETITIONER: 2ND ACCUSED

P.I.MOHAMMED KUTTY @ MAMMOOTTY,
CHAIRMAN, KAIRALI T.V.,
PADMAVILASOM ROAD, PORT P.O.,
THIRUVANANTHAPURAM. RESIDING AT NO.7 GREEN WAY'S
ROAD EXTENSION, RAJA ANNAMALAIPURAM,
CHENNAI - 600028.

BY ADV. SRI.K.GOPALAKRISHNA KURUP
SRI.C.E.UNNIKRISHNAN

RESPONDENTS: COMPLAINANT AND THE STATE

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1. SEEBA RADHAKRISHNAN, PUTHENPURAYIL,
KLAPANA SOUTH, VALLIKKAVU,
KARUNAGAPPALLY, KOLLAM.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR (SRI.K.C. SANTHOSHKUMAR)
SMT.T.D.RAJALAKSHMI
SRI.E.R.VENKATESWARAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. HEMA, J.

Crl.M.C.No. 10757 of 2002 D

Dated this the 13th day of September, 2007

ORDER

This petition is filed by the 2nd accused to quash the complaint filed against him by the first respondent alleging offences under Sections 499, 500, 501, 502 and 34 of IPC before the Chief Judicial Magistrate Court.

2. As per the allegations in the complaint, a news item was broadcast in Kairali T.V. Channel on 22.11.2000 at 7 30 pm., imputing defamatory statement against the complainant. According to the complainant, accused nos. 1 to 5 have effected the publication and they are responsible for publishing the defamatory news in the visuals in the television channel. It is also alleged that accused nos. 1 to 5 made the publication with intention of imputing defamation and to discredit the complainant in the eyes of the public. The complainant also produced certain documents in support of the allegations in the complaint. After taking sworn statement, the trial court issued process against the accused for the offences alleged in the compliant.

3. Learned counsel appearing for the petitioner vehemently contended that there is no specific allegations in the complaint, regarding the necessary ingredients of the offence of defamation under section 499 IPC. In the absence of positive averments or allegations in the complaint disclosing the ingredients of the offence, the second accused-petitioner cannot be prosecuted in the said offence, it is contended. He cited various decisions in support of his argument [(K.M. Mathew v. State of Kerala) AIR 1992 SC 2206, Bhagat Singh v. Lachman Singh (AIR 1968 Calcutta 296) etc.].

4. Learned counsel appearing for the respondent-complainant, on the other hand, argued that allegations constituting the alleged offences are revealed from the complaint and the documents produced along with the complaint. It is also pointed out that the silence on the part of the 2nd accused in not sending a reply to the lawyer notice issued to him in respect of the alleged offence also has to be taken into account, in support of the allegations made in the compliant. All these read together will disclose the offence alleged and hence it cannot be said that taking cognizance of offence is illegal, it is strongly argued. He also cited the decisions reported in Mammootty v. Rajaji Mathew Thomas [2006 (3) KLT 335], and

Mathew v. Abraham [2002 (3) KLT 282] to fortify his line of arguments.

5. In the light of the above dispute, I have gone through complaint carefully. The defamatory statements alleged to have been made against the petitioner are quoted in the compliant. The relevant Video and Audio are also produced along with the complaint. It is not disputed. In paragraph 11 of the complaint, it is alleged as follows:

> "The accused 1 to 5 have done the above publications and visuals exhibited with the intention of imputing defamation and purposeful degradation in the eye of the people. The accused 1 to 5 are responsible for the above publication of the news and exhibition of visuals individually and collectively."

From a reading of paragraph 11 of the complaint and the documents produced along with the complaint, it is evident that allegations are made against accused nos. 1 to 5 (A2 is the petitioner) that audio-video publication are effected, containing defamatory statements against the complainant, with the intention of imputing defamation and to cause harm to the complainant. It is specifically alleged that the accused 1 to 5, including the petitioner are responsible for the publication of the news and exhibition of visuals individually and collectively.

6. Therefore, it cannot be said that this is a case where there is total absence of allegations regarding the publication of defamatory

statement. The intention of the accused in making the statement and causing alleged harm to the complainant is also specifically alleged in the complaint. It cannot therefore, be said that there is total lack of allegations regarding the responsibility of the petitioner in the publication and exhibition of objectionable visuals in the T.V. Channel.

7. Learned counsel appearing for the petitioner strongly argued that knowledge has not been attributed to the petitioner in making objectionable publication and in the absence of any allegation regarding such knowledge of the petitioner in making defamatory statement, he cannot be held liable. Since, intention is alleged, it may not be necessary to allege knowledge or belief also. Any way, an allegation is made that objectionable publication is made with intention to harm the reputation, which is a necessary factor for proceeding against petitioner for offence under section 499 IPC.

8. Section 499 of IPC reads that whoever, by words either spoken of intended to be read, or by signs or by visible representatives, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases excepted, to defame that person. Therefore, publication or making of any defamatory imputation has to be with the

intention to cause harm to the reputation of the victim. But, it may not be necessary to establish intention in all cases. As per section 499 it is sufficient if the accused has the knowledge or the reasonable belief that imputation will harm reputation of the victim. The prosecution need establish either the intention, or the knowledge or the reasonable belief, as referred to in Section 499 of IPC. Since there is specific allegation that accused no.1 to 5 had the intention to harm the reputation of the complainant, that would be sufficient to proceed against the petitioner. At this stage, it is not essential to consider whether the allegation regarding intention is false or not.

9. Learned counsel appearing for the petitioner also argued that the allegations in paragraph 11 are too vague for the court to take cognizance of the offence. Of course, there are only allegations of bare facts constituting the ingredients of the alleged offence in paragraph 11. But, it was pointed out by learned counsel for respondent that a notice was issued to the petitioner in advance bringing to his notice all the allegations made in the compliant, as Chairman of Kairali T.V. But, no reply was sent to the lawyer notice and the petitioner has no case that a reply was sent denying the allegations. In such circumstances, it cannot be said that the trial court has gone wrong in taking cognizance of the offence under section 500 IPC etc.

10. The decision reported in 2006 (3) KLT 335 was cited in this case to argue that a company can also be made liable for the offence under section 500 IPC and the Directors will be liable for the act. Learned counsel for petitioner argued that the said decision will not be applicable to the facts of this case, since there is no allegation that the Company has committed the offence. Even if, for argument's sake, all the allegations in the complaint in paragraph 11 are accepted, there is only personal allegation against the petitioner that he is also responsible for the publication and that he had made the publication etc., with the intention to defame the complainant. But there is absolutely nothing in the complaint to show that he was made an accused in the capacity as Director or Chairman of a Company as referred to in 2006(3) KLT 335.

11. As per the dictum laid down in the said decision, the Directors etc. of the Company can be made liable for the offence, if a Company isalleged to have made a defamatory statement. In the absence of any allegation that the company has made a defamatory statement, it is argued that the said decision has no applicability to the facts of this case. In the light of the facts pointed out by learned counsel for the petitioner, I find that these arguments have to be looked into by the trial court at appropriate stage, but it may not be otherwise of the said decision to the facts of this case.

12. At any rate, on hearing both sides, though the allegations are of general in nature, as seen from paragraph 11, in the absence of any reply notice having been sent, there is no scope for any interference. At this stage, it is only sufficient, if it is found whether the allegations in the complaint constitute the alleged offence to proceed against the accused. Since the allegations in the complaint prima facie constitute the alleged offence, I find no reason to interfere with the proceedings initiated against the petitioner. The trial court shall dispose of the case, untrammelled by any of the observations made in this order.

13. Learned counsel for the petitioner submitted that a direction may be issued that the petitioner may be exempted from personal appearance under Section 205 of the Code. I do not think, I have to make any order regarding this because, it is left to the discretion of the trial court to consider the question and dispose of the application if any, filed by petitioner for exemption. The trial court will look into the matter and pass appropriate orders.

This petition is dismissed.

Sd/-

K. HEMA, JUDGE.

Krs.

// True Copy //

K. HEMA, J.

Crl.M.C.No. 10757 of 2002 D

13th day of September, 2007

ORDER